

# The Gazette of India

## EXTRAORDINARY PART II—Section 2 PUBLISHED BY AUTHORITY

---

No. 13] NEW DELHI, MONDAY, MARCH 28, 1960/CHAITRA 8, 1882

---

### LOK SABHA

The following Report of the Joint Committee on the Bill to amend and consolidate the law relating to legal practitioners and to provide for the constitution of Bar Councils and an All-India Bar was presented to Lok Sabha on the 28th March, 1960:—

#### Composition of the Joint Committee

Shri C. R. Pattabhi Raman—*Chairman*

#### MEMBERS

##### *Lok Sabha*

2. Shri M. Thirumala Rao
3. Shri Liladhar Kotoki
4. Shri Kailash Pati Sinha
5. Shri Mohammad Tahir
6. Shri Narendrabhai Nathwani
7. Shri K. G. Deshmukh
8. Shri M. Sri Ranga Rao
9. Shri C. D. Gautam
10. Shri Radha Charan Sharma
11. Shri P. Thanulingom Nadar
12. Shri T. Ganpathy
13. Shri K. R. Achar
14. Shri Hem Raj
15. Pandit Mukat Behari Lal Bhargava
16. Pandit Munishwar Dutt Upadhyay
17. Shri Raghubir Sahai

18. Shri Radha Mohan Singh
19. Shri Paresh Nath Kayal
20. Shri Ganpati Ram
21. Shri R. M. Hajarnavis
22. Shri S. C. Gupta
23. Shri T. C. M. Menon
24. Shri N. Siva Raj
25. Shri Khushwaqt Rai
26. Shri D. R. Chavan
27. Shri Ram Garib
28. Shri Braj Raj Singh
29. Dr. A. Krishnaswami
30. Shri Asoke K. Sen

*Rajya Sabha*

31. Shri P. N. Sapru
32. Diwan Chaman Lall
33. Shri Santosh Kumar Basu
34. Dr. W. S. Barlingay
35. Shri Jagan Nath Kaushal
36. Shri R. C. Gupta
37. Shri Braja Kishore Prasad Sinha
38. Shri M. Valiulla
39. Shri S. Channa Reddy
40. Shri Sonusing Dhansing Patil
41. Shri P. D. Himatsingka
42. Dr. Raj Bahadur Gour
43. Shri Faridul Haq Ansari
44. Shri Harihar Patel
45. Shri B. D. Khobargade.

DRAFTSMEN

Shri G. R. Rajagopaul, *Secretary, Legislative Department,  
Ministry of Law.*

Shri S. K. Hiranandani, *Joint Secretary and Draftsman,  
Ministry of Law.*

SECRETARIAT

Shri S. L. Shakdher—*Joint Secretary.*

Shri A. L. Rai—*Deputy Secretary.*

### Report of the Joint Committee

1. The Chairman of the Joint Committee to which the \*Bill to amend and consolidate the law relating to legal practitioners and to provide for the constitution of Bar Councils and an All-India Bar, was referred, having been authorised to submit the report on their behalf, present their Report with the Bill as amended by the Committee annexed thereto.

2. The Bill was introduced in the Lok Sabha on the 19th November, 1959.

3. The motion for reference of the Bill to a Joint Committee of the Houses was moved by Shri A. K. Sen, Minister of Law on the 2nd December, 1959 and was discussed on the 2nd and 3rd December, 1959 and was adopted on the 3rd December, 1959.

4. The Rajya Sabha discussed and concurred in the said motion on the 9th December, 1959.

5. The message from the Rajya Sabha was read out to the Lok Sabha on the 14th December, 1959.

6. The Committee held ten sittings in all.

7. The first sitting of the Committee was held on the 18th December, 1959, to draw up a programme of work. The Committee, at this sitting also decided to hear evidence from associations and individuals desirous of presenting their suggestions or views before the Committee. The Chairman was authorised to decide, after examining the memoranda submitted by them, as to which of the associations and individuals might be called to tender oral evidence before the Committee.

8. Twenty-five memoranda/representations on the Bill were received by the Committee from different associations and individuals.

9. Evidence was not taken by the Committee.

10. The Committee considered the Bill clause by clause at their 2nd to 9th sittings held on the 25th, 27th, 28th, 29th and 30th January, 13th February and 2nd and 3rd March, 1960, respectively.

The Report of the Committee was to be presented by the 12th February, 1960. The Committee were granted extension of time on the 12th February, 1960, upto the 30th March, 1960.

---

\*Published in Part II, Section 2 of the Gazette of India, Extraordinary, dated the 19th November, 1959.

11. The Committee considered and adopted the Report at their tenth sitting held on the 21st March, 1960.

12. The observations of the Committee with regard to the principal changes proposed in the Bill are detailed in the succeeding paragraphs.

13. *Clause 1.*—The Committee are of the view that since there will be only one class of legal practitioners hereafter, namely, advocates, it will be more appropriate to call the proposed enactment “The Advocates Act” instead of the “The Legal Practitioners Act”.

The clause has been amended accordingly.

14. *Clause 3.*—The Committee feel that since Delhi as the seat of the Supreme Court has assumed special importance in the legal profession, there ought to be a separate Bar Council for Delhi. In the opinion of the Committee, Bar Councils should be autonomous bodies and judges should not be represented thereon. The Committee further consider that the strength of elected members of State Bar Councils should be increased from ten and fifteen to fifteen and twenty, respectively. The Committee are of the opinion that in order to ensure representation to all shades of opinion, the mode of election to the Bar Councils, should be in accordance with the system of proportional representation by means of the single transferable vote. Since the elections will be in accordance with the system of proportional representation by means of the single transferable vote, it is not necessary to give special representation to advocates practising on the original side.

The clause has been revised accordingly.

15. *Clause 4.*—In view of the decision of the Committee that judges should not be represented on a Bar Council, original sub-clause (a), which gives representation to judges of the Supreme Court on the Bar Council of India, has been omitted. Since there will be a separate Bar Council for Delhi, original sub-clause (d), which gives representation to the Supreme Court Bar Association on the Bar Council of India, has also been omitted. The Committee feel that the representation given to State Bar Councils on the Bar Council of India should be of a uniform pattern and that no distinction should be made between States which have a large number of advocates and those which have a small number of advocates.

Original sub-clause (f) has accordingly been omitted.

16. *Clauses 6 and 7.*—The functions of State Bar Councils and the Bar Council of India have been enlarged. The functions will now include the safeguarding of the rights, privileges and interests

of advocates on its roll, promotion and support of law reform and a State Bar Council has been empowered to constitute a fund for giving financial assistance to indigent and disabled advocates.

17. *Clauses 9 and 10 (Original clause 9).*—The Committee feel that one disciplinary committee, particularly in larger States, may not be able to cope with the work. A State Bar Council has, therefore, been empowered to constitute more than one disciplinary committee, wherever necessary. The Committee consider that it is not necessary that all the members of a disciplinary committee should be members of the Bar Council although they must necessarily be advocates on the roll of the Bar Council.

In view of the decision of the Committee that judges should not be represented on a Bar Council, the item giving representations to judges of the Supreme Court on the legal education committee has been omitted.

Further, the Committee feel that members who are to be coopted on the legal education committee should be coopted by the Bar Council of India and not by the elected members of that committee.

The clause has been amended accordingly.

18. *Clause 11 (Original clause 10).*—The Committee understand that in some Bar Councils there may not be enough work for a full-time accountant. It should, therefore, be optional for Bar Councils to appoint a separate accountant.

The clause has been amended accordingly.

19. *Clause 17 (Original clause 16).*—The Committee consider that an advocate already on the roll of a High Court should have the option to enrol himself on the State Bar Council within whose jurisdiction he proposed to practise. The Committee further consider that the seniority of a vakil, pleader or attorney who is enrolled as an advocate, whether before or after the commencement of this enactment should be determined according to the date of his entry in the register of vakils, pleaders or attorneys. In addition, an advocate should not be enrolled on the roll of more than one State Bar Council.

The clause has been amended accordingly.

20. *Clause 18 (New clause)* —The Committee are of the opinion that although an advocate is not permitted to enrol himself on the roll of more than one State Bar Council, he should have the right to

get his name transferred from one State roll to another if he so chooses on account of his changing the venue of his practice or for some other reason. The clause makes the necessary provision.

21. *Clause 24 (Original clause 22).*—The Committee feel that citizens of India who obtain legal qualification either in this country or abroad should be entitled to be enrolled as advocates.

In the opinion of the Committee a degree in law is a sufficient qualification for enrolment as an advocate and that it is not necessary to provide for the additional qualification of a degree in arts, science or commerce.

The Committee, however, consider that a course of practical training followed by an examination in regard to such training should be made compulsory.

An enrolment fee of Rs. 500/- as proposed in the Bill is too high and it should be reduced to Rs. 250/-.

In the opinion of the Committee, the time-limit fixed in respect of a vakil, pleader or attorney, who is a law graduate for applying for enrolment as an advocate on a State roll, should be increased from one year to two years.

The clause has been amended accordingly.

22. *Clause 30 (Original clause 28).*—The amended clause makes it clear that the restrictions imposed by the Constitution on retired judges of the Supreme Court or of a High Court are not affected by this clause.

23. *Clause 35 (Original clause 33).*—The Committee feel that before a State Bar Council refers a complaint against an advocate to its disciplinary committee, it should be satisfied that there is a *prima facie* case against the advocate.

The clause has been amended accordingly.

24. *Clauses 37, 38, 39 and 40 (Original clauses 35 and 36).*—The Committee are of the opinion that a person aggrieved by the order of a disciplinary committee of the Bar Council of India should have a right of appeal to the Supreme Court.

The clause has been revised accordingly.

25. *(Original clause 50).*—The clause has been omitted in view of the amendments made in clause 24.

26. *Clause 51 (new clause).*—Some enactments like the Official Trustees Act, 1913 refer to an advocate enrolled by a High Court. Since under the new Act advocates will be enrolled by a State Bar Council and not by a High Court, this clause has been added to remove any difficulty in the interpretation of such enactments.

27. *Clause 52 (new clause).*—This clause makes it clear that the power of the Supreme Court to make rules under Article 145 of the Constitution in respect of certain matters relating to advocates practising before that Court is not affected.

28. It has been brought to the notice of the Committee that in certain High Courts members of the Bar have formed themselves into different groups with separate associations and exclusive rooms in the High Court buildings. In the opinion of the Committee, this is a very undesirable practice and the Committee hope that the authorities concerned would take early steps to put an end to it. The Committee note that the Law Commission has also condemned this practice in its Fourteenth Report.

29. A question was raised regarding the levy of stamp duty on certificates of advocates. These stamp duties vary from State to State. Since the Bill proposes the levy of a fee of Rs. 250|-, it was suggested that no stamp duty in addition to this should be payable. While a provision in the Bill in this behalf may be of doubtful validity in view of the distribution in the Constitution of legislative powers relating to stamp duty, the Committee recommend that the State Governments might be persuaded to take such action as may be necessary so that no stamp duty, in addition to the fee payable under this Bill, is levied on the admission of advocates.

The Committee note that the Law Commission has also stated that no stamp duty in addition to the fee payable to the Bar Council should be levied as in their opinion such a levy would be unjust.

30. The Joint Committee recommend that the Bill, as amended, be passed.

NEW DELHI;  
The 25th March, 1960.

C. R. PATTABHI RAMAN,  
Chairman,  
Joint Committee.

### Note

I am in general agreement with the decisions arrived at by the Joint Committee, as far as they go; and I am definitely of the view that even if the Bill goes no further than creating an all-India Bar, it is nevertheless an achievement to be proud of from the national point of view. I, however, feel that the problem involved has got to be tackled in a far more radical and positive way; and I am appending this note to place my point of view before Parliament.

2. The principle beneath this particular Bill as beneath the old Acts which tried to regulate the legal profession is the much abused doctrine of *laissez-faire*. This doctrine is somehow confused with the principle of individual liberty. Accordingly, this Bill lays down that there shall be a unified bar for the entire country; and the relative seniority and juniority of the members of the brotherhood will be determined not as between members in any one particular State, but as between members of the brotherhood in the country as a whole. It also creates the necessary organizational machinery for laying down educational and other qualifications for being admitted to the brotherhood and for enforcing discipline and standards of professional morality amongst its members. The individual, however, is left entirely to his own resources for attaining the standards whether of legal learning or professional morality. The function of a bar council is confined only to laying down those standards and admitting and retaining those alone in the brotherhood who conform to these standards.

3. I submit, that all this is merely a negative approach to the problem involved. The Bar is the pivot of the judicial administration in this country and unless positive steps are taken to raise its standards of efficiency and moral conduct and protect it against the growing forces of corruption in our society, it will be difficult to secure social justice and in the ultimate analysis that will undermine the very foundations of our democratic institutions. In this matter, we should not be satisfied with mere palliatives but try to see the root cause of the disease and take bold steps to eradicate it. It is indeed curious that while so far as the State is concerned, we have rapidly grown out of the old concept of the police state and have even travelled beyond the concept of the welfare state, towards a



socialist state, we should still stick to the old notion of *laissez-fair* for the organisation of the learned professions within the State. This doctrine of *laissez-fair*, though it superficially looks like the principle of individual liberty can never either in theory or in practice be equated with it. Individual liberty is not a natural right in Rosseau's sense of the term. It is rather a product of rights and duties which society confers and imposes upon the individuals to enable them to attain their highest stature as rational beings.

4. What is the source of the evil that has crept into the legal profession as indeed in every department of human life. I venture to submit that in the ultimate analysis it is the inequitable distribution of legal work and opportunities and the inordinate disparities in the remuneration which it brings that lies at the root of all inefficiency and fall in the moral standards, so far as this profession is concerned. I am not unaware of the difficulties, legal or otherwise, of introducing regulation and control in the sphere of the freedom of contract between the client and the counsel, especially where the client chooses a person of his choice because of his individual merit. But nonetheless I am of the view that the sanctity of freedom of contract in this sphere is grossly exaggerated; and that in practice it is neither morally wrong nor injurious to the true interests of the litigants that even these relations should be suitably regulated with a view as I have said, to canalize legal work and its remuneration in an equitable way. What practical shape all this regulation should take is a matter for discussion and decision by the various professional organisations like the State and Central Bar Councils etc. But it is nevertheless important to emphasize this aspect of the matter and to impress upon the organisations concerned that they must change their point of view in a fundamental and positive way so as to secure for every member of the profession a minimum decent standard of living.

5. I do not, at present, wish to go so far as to say that all legal service should be either socialized or nationalized. Nor do I minimize the difficulties in suggesting actual amendments to the present Bill to secure the aforesaid objects. But I suggest as a first step that clauses 6 and 7 of the Bill should be suitably amended and the State and Central Bar Councils should be given necessary powers (which do not now exist) to regulate and control the admission to the bar and to regulate the relations where necessary between the client and the counsel also. It should in effect be a part of the functions of the Bar Councils created by this Bill that they should take active steps to see (i) that legal work is distributed amongst its members as

---

equitably as possible and (ii) that every member of the profession is assured a decent standard of living.

I do hope that this suggestion will receive the **serious consideration** that it deserves.

W. S. BARLINGAY.

NEW DELHI;  
*The 21st March, 1960.*

## Minutes of Dissent

### I

The Joint Committee on the Legal Practitioners Bill has no doubt done a good job and we have no hesitation in congratulating it for that work.

2. The Joint Committee has improved the Bill considerably for instance by providing that the Bar Council will have among its functions:—

- (1) To safeguard the rights, privileges and interests of advocates; and
- (2) To promote and support the reform of law.

3. These provisions have no doubt extended the scope of the Bar Councils which would be entirely independent and autonomous bodies, who would be called upon not only to guard against any encroachment on the rights of the lawyers but also make suggestions as to how the present system of administration of justice can be improved.

4. It is evident that there are persistent complaints about inordinate delays in securing decisions of cases, guilty persons escaping punishment, about the costliness of administration of justice, about prevailing perjury etc. in and about law courts. Now all these matters are of great importance and though attempts have been made in the past to tackle these issues, yet they continue to agitate the mind of the public. Time has come when these questions should receive serious consideration at the hands of these competent bodies and effective solutions found out.

5. The system of administration of justice prevailing in India is a legacy of British rule. It has no doubt served a great purpose, but in order to bring it in harmony with the changing times, conditions and needs of the people, suitable adjustments will have to be made. By enacting such a piece of legislation, the responsibility will be more particularly shifted on the shoulders of the members of the legal profession to suggest such suitable reforms in the system which would meet the exigencies of the situation and may at the same time not be a violent break from what we have been used to hitherto.

6. The idea that courts are to be considered as 'temples of justice' shall have to be translated into action. We are admittedly far from that vision, but positive steps will have to be taken to make a move in that direction. We do hope that the Bar Councils will take this matter up.

7. The constitution of an All India Bar was demand of the country since long and this Bill has been brought forward to meet it. Its aim would be to bring in as many eligible lawyers within its fold as possible. That is why the enrolment fee has been reduced from Rs. 500/- originally proposed in the Bill to Rs. 250/-. It would have been much better if this could be reduced to Rs. 125/-, as suggested by the Law Commission and the stamp duty would have been done away with altogether.

8. The Joint Committee has no doubt in its report substantially agreed with the view given expression to by the Law Commission that the imposition of stamp duty was 'totally unjust and should be abolished.' This authoritative view would no doubt be taken into consideration by the different States and should be made use of by the State Bar Councils as well as the Bar Council of India to persuade the States to accept it sooner rather than later.

9. It has been proposed in this Bill that hereafter the advocates would be categorised as senior advocates and other advocates and the former designation could be given by the Supreme Court or the High Court with the consent of the advocate concerned. Now it would have been much better if this had been done on the recommendation of the State Bar Council or the Bar Council of India, for they could have consulted the District Bar Associations as well when the matter concerned a lawyer belonging to the district bar. Otherwise categorisation of senior advocates so far as the district bar are concerned, would be very difficult. As a matter of fact, everybody knows in a district as to who is a senior advocate, but to have them categorised under a statute will be a different matter altogether. You will have to consult the district bar association, or the district judge, or if necessary both, before making any such move. I am afraid, the present provision in the Bill would remain a dead letter so far as the district courts are concerned, but a list of senior advocates would only be possible either at the High Court level or the Supreme Court.

10. Another welcome feature of the Bill would be that a provision has been made for an examination after a prescribed course of practical training in law. Hitherto training was only in name, but

hereafter it is proposed to be something useful and practical. This may have the effect of discouraging many young people, who though they evinced no interest in the profession, yet joined it for the mere fact that they have no other choice.

11. On the whole it would be recognized that it is a useful piece of legislation and would no doubt be welcomed by the members of the legal fraternity all over the country.

RAGHUBIR SAHAI.  
KHUSHWAQT RAI.

NEW DELHI;  
*The 21st March, 1960.*

## II

1. I am glad that the Legal Practitioners Bill has been greatly improved by the deliberations of the Joint Committee. But I regret that the Joint Committee did not find its way to accept an amendment for the abolition of the stamp duty levied on the legal profession under Art. 30 of Schedule I of the Indian Stamp Act, 1899 (except making a general observation for the guidance of the State Governments for its abolition).

2. I think the retention of the imposition of the stamp duty on the legal profession as oppressive. To enrol himself as an advocate, a legal practitioner has to pay a stamp duty of rupees 500·00 nP; 625·00 nP; 750·00 nP; 1031·25 nP (varying in different States) besides Rs. 10·00 nP; 50·00 nP; 100·00 nP (varying in different States) as Bar Council fee under the Bar Council Act, 1926 to the Bar Council. Under the present Bill we have raised this Bar Council fee to Rs. 250·00. Consequently, the pleaders and vakils practising in mofussil courts and fresh law graduates entering the profession, who are to enrol themselves as advocates shall have to pay heavy sums which it is difficult for them to do in the present condition of the legal profession.

3. Even the Law Commission in its Fourteenth Report on 'Reform of Judicial Administration' on pages 574-575 has rightly observed:

"We have been at pains to find out how and on what principle entrance to this profession came to be taxed when no

similar impost is levied on entry into other professions. We have not been able to discover any sound reason or principle for this levy. So far as we know, though payments have to be made to professional bodies like the Inns of Court or the Law Society, no fees are levied in England by the State for the issue of a licence to practise the profession. Nor are we aware of any such fees being levied in the United States. In our view, this imposition is totally unjust and should be abolished."

4. The plea that Parliament is not competent to legislate for the abolition of the stamp duty because it falls under the State List (List II) does not seem to me to be correct. Consequently, I do not subscribe to this view. The right of Parliament to legislate for the legal profession is vouchsafed by entry No. 78 (Union List) and entry No. 26 of List III (Concurrent List) of the Constitution. Hence all relevant matters which govern the enrolment of advocates, the rights and conditions of their practice or for taking proceedings for professional misconduct and payment of stamp duty on an application for enrolment fall within the ambit of entry No. 78 of List I and entry No. 26 of List III, which are as under:

*List I, Entry 78:*

"Constitution and organisation of the High Courts except provisions as to officers and servants of High Courts; persons entitled to practise before the High Courts."

*List III, Entry 26:*

"Legal, medical and other professions."

5. The plea that the imposition or non-imposition of stamp duty is the domain of the State Legislature under entry No. 63 of List II (State List) is not justified. Rather the question of legislation on matters of policy as to which documents should be stamped and which not falls within the legislative competent of Parliament under List III, Entry 44. This reads as under:

"Stamp duties other than duties or fees collected by means of judicial stamps but not including rates of stamp duty."

It is only the rates of stamp duty which are covered by Entry No. 63 of List II, which reads as:

"Rates of stamp duty in respect of documents other than those specified in the provisions of List I with regard to rates of stamp duty."

Entry No. 91 of List I reads as:

"Rates of stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts."

i.e., to say all types of commercial documents.

6. Consequently, by the non-inclusion of the provision of the abolition of the stamp duty, a large number of pleaders and vakils will be debarred from becoming advocates and their number in the moffusils is no less than forty thousand (40,000). Thus the main objective of unifying the Bar at the All India level will be defeated and the State Bar Councils and the All India Bar Council will remain confined to the advocates who are already on the rolls of the Bar Councils of the different High Courts or the Supreme Court.

7. Moreover, leaving this matter to the States will not only be a cumbersome procedure but may defeat the very object of the legislation in enacting this law, because the stamp duties fixed by the different States vary from State to State and they in the interests of their own revenues will be chary to forego this item of their revenue.

8. With these observations I support the rest of the provisions of the Bill as it emerges from the discussions of the Joint Committee.

NEW DELHI;

HEM RAJ.

The 21st March, 1960.

### III

While welcoming the Bill and extending to it my full support so far as its main purpose is concerned, I feel that it falls short of expectation in several important respects. It suffers from a number of features which militate against its avowed purpose, the establishment of a unified Bar with a common roll of advocates having the right to practise in all courts. There are obstacles and impediments in the Bill which will prevent the majority of existing legal practitioners being integrated in the common roll and debar advocates from exercising the full right to practise in all courts.

#### 1. Stamp duty of rupees five hundred

The reconstitution of the Bar on a wide common roll will suffer a set-back if the existing provision in the Stamp Act for the payment

of a stamp duty of Rs. 500/- is not repealed by this Bill. Apart from new entrants, pleaders practising in the subordinate courts may, in many cases, find it extremely difficult, if not impossible, to find the amount in addition to the enrolment fee of Rs. 250/- payable to the State Bar Council under this Bill. The compulsory levy of a stamp duty of Rs. 500/- will scare away many legal practitioners from seeking admission as advocates and the idea of a unified Bar will remain an unrealised dream.

I do not agree with the view that under the Constitution Parliament has no power to abolish this stamp duty which is imposed by the States under item No. 63 of the State List. Under item No. 26 of the Concurrent List, Parliament is dealing with this Bill to regulate the legal profession by the creation of a common roll of advocates. There is nothing to prevent Parliament from enacting for that purpose that no stamp duty will be required for enrolment as advocates. Item No. 44 of the Concurrent List does not stand in the way of any such enactment. The restriction laid down in that item is confined to (a) judicial stamps (with which we are not concerned), and (b) to the rate of the duty with regard to other kinds of stamps such as this levy. In other words, if Parliament is of opinion that as a matter of principle of policy no stamp duty should at all be imposed for enrolment of advocates, it will be within its power to provide that in this Bill. But if Parliament decides to retain a stamp duty for such enrolment, it cannot reduce or enhance the rate fixed by any State.

We are concerned with a non-judicial stamp and with its total abolition and not a variation of its rate. It seems, therefore, to be clear that there is no constitutional bar to a provision being made in this Bill repealing the relevant provision in the Stamp Act for payment of a stamp duty for enrolment of advocates.

I would, therefore, suggest that the provisions of Item No. 30(a) in Schedule I of the Indian Stamp Act, 1899 and the proviso to section 8(2) of the Indian Bar Councils Act, 1926 should be repealed. I welcome, however, the views of the Joint Committee as recorded in the last paragraph of the Report and hope that the stamp duty will be abolished before the Act comes into force.

*2. The compulsory dual system in the High Court in Calcutta and the High Court in Bombay*

This system involves the exclusion of advocates from acting in the original side of these two High Courts, the right to act being



confined entirely to attorneys of the court and to solicitors of England. It is, therefore, wholly repugnant to the idea of a unified Bar with a common roll of advocates "entitled to practise in all courts." The Bill provides that the right to practise in all courts conferred on advocates is to be subjected to rules prescribed by the two High Courts under which acting in their original jurisdiction is at present restricted to attorneys and solicitors. This denial of right to advocates cannot be justified on the ground that as between advocates themselves the Bill envisages a division of labour between senior and other advocates in the matter of pleading and acting, in such courts in which they have the right to plead and act.

The compulsory dual system transplanted from England in the British Supreme Courts in the presidency towns of India more than a century ago, is entirely out of date in the present set up in the country. The elaborate forms and procedure of the traditional British system still persist in the original jurisdiction of the High Court in Calcutta which even now excludes the application of the Indian Code of Civil Procedure as such. The myth of commercial litigation requiring the continuance of the dual system in Calcutta and Bombay has also been exploded in big commercial cities like Ahmedabad and Kanpur where there is no dual system and advocates have the right to act and plead in all original cases including commercial litigation. In Madras, the dual system of advocates and attorneys has been discontinued in the original side of the High Court and eminent advocates of that court like Shri C. P. Ramaswamy Aiyar and Shri T. Rangachariar have strongly expressed themselves against it before the Chamier Committee. Dr. Bakshi Tek Chand, retired judge of the Punjab High Court and Shri Rajaram Aiyer, Advocate-General of Hyderabad have gone on record against that system as members of the All India Bar Committee. The same view has been expressed by the Calcutta High Court Bar Association as also by many advocates of the Bombay High Court.

I believe there is no other country in the world except England and no other High Courts in India except those in Calcutta and Bombay where the compulsory dual system of advocates and attorneys is in force. There is no reason why we should be tied down to this English system in the original jurisdiction of only two High Courts in this country.

If, however, the dual system is to be retained at all, advocates should not be excluded from acting in the original side in the High Courts in Calcutta and Bombay. Provision should be made by Parliament in this Bill itself, consistently with the creation of a unified and autonomous Bar, to ensure that advocates cannot be debarred

from pleading or acting in any court or in any jurisdiction of any High Court. Such a provision cannot adversely affect the position of attorneys whose continuance has not only been recognised and assured in the Bill but who have been given, if graduates in law, the additional right to enrol themselves and plead as advocates, and also to act in the appellate side of all High Courts, while advocates have been denied the right to act in the original side of the two High Courts in Calcutta and Bombay.

Nor can efficiency of work in the matter of acting suffer in any way if suitable steps are taken by the statutory organ of the Bar to secure that end. Under clause 28(2) (a) of the Bill, the State Bar Council can make rules providing for a course of practical training in law and examination for admission as an advocate. In West Bengal and Bombay, such training may cover a short period of practical training, not exceeding a year, in the practice and procedure applicable in the original side of the respective High Courts. As regards persons already enrolled, they may be permitted to act in the original side after the expiry of one calendar year from the date on which the Act comes into force subject of course to rules made by the Bar Council of India under clause 45(e) regarding restrictions on senior advocates in the matter of acting. The prolonged training extending over a number of years and the examinations in law required for admission of attorneys will not be necessary for graduates in law seeking admission as advocates and for persons already practising as advocates in the two High Courts.

By clause 32(1) of the Bill, the High Court is empowered to make rules laying down the conditions subject to which an advocate shall be permitted to practise in the High Court. Such conditions may include the requirement of maintaining an office within the city by the advocate concerned, as has been done in respect of Delhi and New Delhi in the rules of the Supreme Court which has given its advocates (other than senior advocates) the right to act in that Court.

I would, therefore, suggest the adoption of the following amendments:—

1. In clause 34(1), the following be added at the beginning of clause:—

“Subject to the provisions of this Act”.

2. In clause 34(2), after sub-clause (iii) following proviso be added:—

“Provided that subject to rules made by the All India Bar Council under section 45 clause (e) all advocates shall

have the right to plead in all jurisdictions of the High Court at Calcutta and the High Court at Bombay, and after the expiry of one calendar year from the date on which the Act comes into force, also the right to act in all such jurisdictions."

### 3. *Separate associations of advocates in High Court buildings*

I welcome the views of the Joint Committee recorded in paragraph 28 of the Report condemning the practice of certain advocates and classes of advocates forming themselves into separate groups and associations on the basis of foreign qualifications and the personal likes and dislikes of the members. I trust that the authorities concerned will put an end to such discriminatory practices without further loss of time.

SANTOSH KUMAR BASU.

NEW DELHI;  
The 21st March, 1960.

## IV

On the whole I welcome the Bill in the form in which it has emerged from the Joint Committee. There is no doubt that the Joint Committee has made considerable improvements in the Bill. In the form in which it has emerged, it has for the first time made provisions for conferring on the legal profession the proud privilege coupled with the grave responsibility of controlling its own affairs. Many abuses have, from time to time, tended to tarnish in this country the reputation of this profession which is held in the highest esteem everywhere in the world. This, however, is no ground for denying to it the right to regulate itself which it enjoys in every free country of the world. Entrustment of responsibility is one of the most useful ways of inculcating sense of honour and particularly a consciousness that that honour has to be preserved and enhanced. To put the legal profession under tutelage as has been the case so far, does not create conditions for developing a sense of honour and a high consciousness of duty among members of the legal profession. Everyone in the country, and particularly every lawyer fervently hopes that the legal profession will more than justify the trust and confidence reposed in it and develop codes of conduct of which our lawyers as well as the people of the country as a whole will be proud.

In spite of this general support, however, I cannot but make certain reservations, some of them very strong reservations, regarding the

Bill as it has finally emerged from the Joint Committee. These reservations relate to, (i) failure to tackle the problem of exclusiveness in the Bar, (ii) failure to modify the dual system, (iii) failure to do away with the necessity of payment of stamp duties for enrolment as an advocate, (iv) the provision enabling barristers to enrol as advocates without providing for reciprocity, (v) the provision for compulsory examination for being qualified for enrolment and (vi) the provision for clause 52 enabling the Supreme Court to determine the conditions subject to which senior advocates may plead before that court.

### *1. Problem of Exclusive Bar Associations*

Exclusive associations confined to barristers still continue to exist in the Calcutta and Patna High Courts. Formerly they existed in almost all High Courts in what was known as British India. But fortunately they have died out in all except in these two High Courts. The Law Commission has pointed out that exclusive associations of barristers originated in the fact that only barristers were entitled to be enrolled as advocates and as such they had made an exclusive preserve of the original side of the High Courts in the Presidency Towns where advocates alone were entitled to plead. This is certainly an explanation of the beginnings of such associations but a strong element of contempt for the "Native" lawyers appears to have played an important part, if not in the origin, at least in the continuation of such associations. For, what else can explain the fact that such associations existed not only in Calcutta, Bombay and Madras but were introduced in most other High Courts which had no original sides at all and where there was no significant difference as far as rights to practice were concerned between advocates and vakils. Again, what else could be the reason for the continuation of such associations for a long time, even after all vakils became advocates.

Even after vakils became advocates, barristers for a long time enjoyed a superior status in fact, if not in law, particularly in the original sides of the High Court. This has now practically come to an end, but yet the exclusiveness continues in the two High Courts. Of course, the best remedy for it should be in the good sense of members of the English Bar. The exclusiveness had always an element, highly insulting to our national pride and honour. Now, when we have achieved independence, there is no justification for not liquidating it. Unfortunately, however, all attempts to convince the High Court Bar Library Club in Calcutta, about the necessity of doing so, have failed. This is a matter of great regret. It pains me very much as a member of the English Bar and of the High Court Bar Library Club. It is inconceivable that an institution which had

among its members such great men as Deshbandhu C. R. Das, Deshpriya J. M. Sen Gupta, Sarat Chandra Bose, should fail to uphold our national prestige and in fact, insult it by its continued exclusiveness. Even the Calcutta High Court has felt some embarrassment in accepting proposals made by members of the Bar Association as well as by some members of the Bar Library Club to make the club open its doors to all advocates. The Joint Committee has done well to draw attention to the problem and to express the hope that all the authorities concerned will do something to set it right. But experience shows that if we leave it merely to the good sense of the associations concerned or even to the High Courts, much cannot be expected. Therefore, legislative intervention appears necessary.

I must not be understood as suggesting that the whole of the High Court Bar Library Club is in favour of this exclusiveness. As a matter of fact, there are quite a number of barristers in Calcutta who are genuinely opposed to this exclusiveness. But unfortunately, a small majority in the Bar Library Club still prevents its doors being opened to all advocates irrespective of whether they have been trained in India or in the United Kingdom.

I, as a barrister and member of the Bar Library Club, fervently hope that before this Bill is taken up and before amendments designed to do away with exclusiveness are tabled, as they are bound to be tabled, the Bar Library Club in the Calcutta and the Patna High Courts will prove that they are worthy of the traditions represented by barristers like Deshbandhu C. R. Das, Deshpriya J. M. Sen Gupta and Mahatma Gandhi.

## *2. The Dual System*

The Bill, as it has emerged from the Joint Committee, retains the dual system as it exists in Calcutta and Bombay and leaves it to the High Courts to decide about its future. The Bill proceeds on the basis of the recommendation of the Law Commission in this respect. The Law Commission on its part, has not given any reason of its own for leaving the dual system undisturbed and has only endorsed the reasons given by the All India Bar Committee. We have, therefore, to examine whether the reasons advanced by the All India Bar Committee for the continuance of the dual system are adequate, and whether all aspects of the matter have been fully considered by that committee.

The main reason advanced by the All India Bar Committee in favour of the dual system as it exists today in the High Courts of Calcutta and Bombay is the efficiency and thoroughness with which cases are prepared under the dual system due to the division of

labour between one set of lawyers who act and another set of lawyers who plead and because of the efficient organisation and equipment of the offices of the attorneys. While this is undoubtedly correct, the question arises whether the dual system as we know it today in Calcutta and Bombay, is the only method by which this division of labour or this efficiency or organisation and equipment can be achieved. If this were so, why did not that system prove equally efficient while it existed in the Federal Court and the Supreme Court.

It is also true that in the courts at a lower level, the preparation is not as thorough as on the original sides of the High Courts but is it merely because of the absence of the dual system? It is a well known fact that even without the dual system, a division of labour does usually take place in the more complicated litigations. One or two juniors do the work of preparing the case while the senior lawyer pleads? The reasons why in spite of this, a proper standard of efficiency and preparation could not be reached in the district courts, or in the Federal Court or the Supreme Court, seem to be these. In the first place, there is and was no scope for advocates, pleaders or agents to combine into firms. It is an indisputable fact that unless several lawyers combine in a partnership, they cannot make the requisite investment or employ the requisite staff or provide the requisite number of legal experts to be able to cope with an efficient and thorough preparation of cases. Much the same result could have ensued if solicitors were required to work on their own. Secondly, in the case of the district courts, or courts at a lower level even if combinations were permitted, very few lawyers could probably afford a well-equipped and well-staffed office because of the generally low level of income of lawyers in those courts. Thirdly, facilities for adequate training of acting lawyers is not available in the district or the lower courts and were not available in the case of the Federal Court or in the Supreme Court. To remove all these difficulties the dual system as we know it today is not an essential. The dual system of today involves the division of lawyers into watertight classes, those who are entitled to act only and those who are entitled to plead only. There is nothing in such a division which is a necessary concomitant to efficiency. Even if a person is entitled both to act and plead the same efficiency can be achieved and will be achieved if there is proper division of labour, as is bound to take place in complicated litigations, if acting lawyers are allowed to combine and their level of income is sufficient to enable them to establish an efficient organisation and if adequate training is provided and insisted upon by the courts concerned.

On the other hand both the Law Commission and the All India Bar Committee have given inadequate consideration to two important

arguments against continuing the dual system in the present form.

In the first place the dual system is hard on lawyers by preventing interchanging of functions and secondly, it is hard on litigants by compelling them to engage two lawyers even where one is sufficient or more than sufficient.

Even an Englishman, like Lord Bryce, was actually conscious of the injustice that may result to lawyers from the dual system in its rigid form. If a person enrolled as a solicitor, discovers that he can do much better as an advocate and has not the proper aptitude of a solicitor, he cannot change without difficulty. In our country, no doubt, an attorney can enrol himself as an advocate but that only by mulcting himself of some thousand rupees or more by way of enrolment and stamp fees in addition to what he has already paid for enrolling himself as an attorney and in paying his firm for his article clerkship. The same applies in reverse to an advocate who might discover that he might do better as an attorney. Neither the Law Commission nor the All India Bar Committee have advanced any cogent reasons to refute the argument of interchangeability as a reason for modifying the dual system.

In the case of the litigant the system involves an element of compulsion which is to say the least, unjust. No doubt in complicated cases two lawyers are necessary for dividing between themselves the job of preparation and presentation of the case. But in the simpler cases, and there are quite a number of them, two lawyers are absolutely unnecessary and one can easily and efficiently cope with the whole case. For instance in matters like cases under Order XXXVII of the Code of Civil Procedure or in undefended cases, it is a needless luxury and a hard dispensation to insist on a litigant engaging two lawyers.

Both the Law Commission and the All India Bar Committee have met this argument against compulsion by saying that as there are compulsions in many other fields, there can be no objection to compulsion in this matter also. The All India Bar Committee has cited the instance of compulsory payment of court fees. But, surely, this is not a very convincing argument. The only way to test the propriety of any compulsion is by the purpose which it is designed to serve. If the compulsion serves a proper purpose, it should be continued. If on the other hand it is unfair on the person compelled, it should be abolished. For instance the Law Commission itself is of opinion that the levy of the court fees should be done away with. Thus the fallacy of the reasoning of the All India Bar Committee and of the Law Commission for the matter of that is that it assumes that one kind of compulsion justifies another kind of

compulsion. But, surely, a compulsion which is proper cannot justify a compulsion which is improper, nor can one improper compulsion justify another. As has been already shown there is no justification for compelling every litigant, however small and simple his case to engage two lawyers.

The advantage of the present dual system can however, be fully preserved and the objections to it completely eliminated by adopting a modified dual system in which every lawyer who is entitled to act, will also be entitled to plead and a lawyer will be entitled to act if he has received the requisite training and fulfilled other conditions to be prescribed by the Court. If this form is adopted and suitable rules and regulations are made, it will continue to ensure efficiency in preparation, enable lawyers to interchange functions and save the litigant needless costs.

I am strongly against leaving this matter to the High Courts as the Bill has done because experience has shown that the High Courts feel some embarrassment in disturbing an old institution. Therefore, Parliament must take the responsibility of introducing this modified form of the dual system in Calcutta and Bombay and, indeed throughout the country.

### *3. Stamp Duty*

I am strongly of the opinion that the Joint Committee should have made a provision in the Bill to the effect that an advocate shall be entitled to be enrolled as such and to practise without any other payment than the fee payable to the State Bar Council. Such a provision would have relieved advocates from having to pay heavy stamp duties. I do not agree that such a provision would have been of doubtful validity as the Joint Committee has suggested. I shall not at this stage enter into an elaborate discussion of the matter as that would needlessly lengthen this minute. But I shall briefly indicate my reasons. No doubt stamp duty of the kind levied falls within the State List, but the kind of provision I am suggesting, would fall within the Union List, within the entry permitting "Regulation of the Legal Profession". If that is so and the provision came into conflict with the law empowering State Governments to levy Stamp Duty, then the former provision would prevail because under Article 246 the legislative powers covered by the State List are expressly made subject to the powers covered by the Union List. In any event, when it is agreed on all hands that the Stamp Duty is oppressive and when it is quite clear that the States left to themselves, would not abandon them, it is essential that such a provision should be made. Even if its validity is questionable, it should be allowed to be tested and decided by the courts.



#### 4. *Enrolment of Barristers without reciprocity*

I have to record my dissent on the provision of clause 24 which enables barristers to enrol as advocates without at the same time providing for reciprocity. Being a barrister myself I cannot and do not have any objection to recognition of this qualification for the purpose of enrolment. I am also not averse to our lawyers being called to the Bar if they so wish. The only objection is that we should provide for the recognition of a foreign qualification without at the same time insisting on reciprocity.

National honour demands that if we recognise any foreign qualifications it must be on condition that the corresponding qualification in our country should be recognised in the other country. A departure can be made from this rule only when it is not possible to obtain a corresponding qualification in our country. I understand that there are certain scientific and technological qualifications which can be obtained in certain foreign countries but not in ours. In such cases there can be no objection to a unilateral recognition. For there can be no scope of reciprocity in such cases. A barrister's qualification is not of that type. The examination in which a barrister appears is held on the basis of the same kind of curriculum as in examination for the degree of bachelors of law in our universities. No difficulty arises at present. Indian advocates are allowed to be called to the Bar in England, if they desire to practise there. Therefore, we should have no hesitation in admitting barristers as advocates in our country. But if a time comes when England withdraws the facility, we shall be placed in the very unedifying position of being compelled by law to recognise the English qualification while ours are not recognised there.

#### 5. *Compulsory Examinations*

I cannot support the change made in clause 24 of the Bill (original clause 22), making it compulsory for Bar Councils to prescribe an examination as a condition for enrolment as an Advocate. No doubt, if the training given to a person before enrolment is not of a high order, an examination may be necessary in order to ascertain whether he has attained a minimum level of efficiency. But if training is rigidly and seriously given by conscientious seniors examinations become absolutely unnecessary.

In England barristers do not have to appear in examination after reading in Chambers because unless they reach a minimum level of efficiency, their seniors would not give them the requisite certificate. Unfortunately in our country this kind of training is rare and an

11 G of I Ex-4.

examination may be required. But we may hope that the re-organised profession will set before itself and achieve higher standards. And, in that event, the Bar Councils should be entitled to decide whether an examination is really necessary. Therefore, the matter should be left entirely to the discretion of the State Bar Council.

#### 6. *Senior Advocates appearance in the Supreme Court*

Clause 52 leaves it to the Supreme Court to decide conditions subject to which an advocate on record may act and a senior advocate may plead in the Supreme Court. There can, of course, be no objection to empowering the Supreme Court to prescribe conditions subject to which advocates on record could act in that court. Certain conditions like residence in Delhi, maintenance of an office etc. have to be prescribed in the interest of efficiency. But it is difficult to perceive any reason for leaving it to the Supreme Court to decide the conditions subject to which senior advocates can plead before that Court. The Supreme Court has not prescribed any such conditions till now and it is difficult to see what conditions could be prescribed. The only condition relating to senior advocates could be an insistence of a certain length of practice, a certain standing at the Bar and a certain kind of restriction on the right to practise. When we are creating a common roll of advocates, there can be no logic in empowering the Supreme Court to prescribe different kinds of conditions in these matters from what would exist in the High Courts.

The main idea behind a common roll is that every lawyer should have the same right to practise in all courts of the country from the highest to the lowest. Therefore, whatever conditions a senior Advocate may be subject to, must be uniform.

In these circumstances I am of the opinion that the Bill should be passed with the modifications indicated by me above.

NEW DELHI;

S. C. GUPTA.

*The 22nd March, 1960.*

V

I am in general agreement with the recommendations of the Joint Committee. I, however, have to add the following to the report of the Committee:—

The Committee has recognised the need for assistance to indigent and disabled advocates and for this purpose a sub-clause has been added to clause 6 of the Bill.

In my opinion this will not serve the purpose. The funds at the disposal of a State Bar Council will be very much limited and the number of advocates falling in the category of indigent and disabled advocates would be large.

Besides the two categories of indigent and disabled there is a third category of lawyers who may require to retire at an advanced age or who may die at an early age without leaving sufficient assets for the benefit of widows or minor children. There is no provision in the Bill for assistance of such lawyers.

I had suggested that a separate provision be made in the Bill which should enable a State Bar Council to establish a fund out of the contribution from fees payable to an Advocate. The portion of the fee will be deposited by the client in court at the time of filing the *vakalatnama* of the particular advocate and the State Bar Council shall administer the fund.

Rules will be framed by the Bar Council for this purpose. All these contributions will be invested in approved securities and will be paid over to the advocate or his heirs as the case may be.

The advocates are the officers of the Court and the Government have a duty to help the State Bar Council in the establishment and working of such fund. This scheme will greatly improve the tone of the Bar.

There was much sympathy for this proposal but it was pointed out that it would involve much work which courts may not like to undertake. To my mind this is not a valid reason. The clerk who keeps the account of every court fee stamp daily can also do it. Hardly there will be few entries to be made every day. The Government has also a responsibility of helping a very important class of persons.

I would, therefore, suggest a slight change in the wording of the proposed sub-clause (2) of clause (6) of the Bill. This clause should read as follows:—

“(2) A State Bar Council might constitute a fund in the prescribed manner for the purposes of giving financial assistance to the advocates on their retirement from the profession and to their heirs on their death.”

AGRA;

\*R. C. GUPTA.

The 18th March, 1960.

\*Certificate required under Direction 87 of the Directions by the Speaker under the Rules of Procedure of Lok Sabha not received.

---

VI

---

I fully endorse the Report of the Committee except in regard to the following matters.

I am unable to support the continuance of the dual system of advocates and attorneys which exists only in the High Courts of Bombay and Calcutta. According to this system the profession is divided into two water-tight compartments and lawyers are grouped in two separate categories of advocates and attorneys. Advocates are entitled to plead only and not to act, whereas the attorneys are allowed to act only and not to plead. This distinction is rigid in the sense that lawyers have to choose one of these two branches, and afterwards there is no interchangeability between the two branches of the profession. In my opinion this militates against the object of having uniform class of legal practitioners. In the statement of objects and reasons it is clearly mentioned that the object of this Bill is "the integration of the bar into a single class of legal practitioners known as advocates". Continuance of dual system which divides legal practitioners in two distinct classes is not in conformity with this professed object.

Secondly, the system violates the principle of equality of status and opportunity. While in other High Courts the advocates are entitled both to act and plead, the advocates practising on the original side in Bombay and Calcutta High Courts are denied the opportunity to act.

Dual system is an expensive system and it increases the costs of litigation. As the work is distributed between two agents, poor litigant has to employ compulsorily two lawyers, one to act and the other to plead. He has to incur double expenditure by paying fees to two lawyers. It is accepted by all that the administration of justice should be cheaper and that any aggrieved party should be able to get his wrong redressed without having to incur huge expenditure for litigation. To engage two lawyers does necessarily involve more expenditure. Therefore, justice will be denied to those persons who, because of huge expenditure involved, are not able to prosecute their claim, or defend themselves in the courts of law. Moreover, the losing litigant will have to bear very heavy burden of costs as he will have to pay increased costs of litigation to the other party and to bear his own costs.

The only justification for continuance of the dual system is, as claimed by the protagonists of the system, that it results in efficient preparation and prosecution of the case. It will be noted that dual system is in force only in two High Courts. Does this mean

that in other courts there is no efficient prosecution of cases and efficient administration of justice? Certainly not. In other courts also prosecution of cases is equally efficient. Dual system involves division of labour and, therefore, there might be some slight advantages in preparing and prosecuting the cases. But what about the heavy expenses that the litigants have to incur, and denial of justice to the poor litigants who cannot afford to pay heavy expenses?

If dual system helps the litigant to prosecute his case efficiently, then let the litigant decide whether he wants to prosecute his case more efficiently, whether he wants to engage two lawyers or only one lawyer. In other words the dual system should be optional and not compulsory. If the litigants desire to engage two sets of lawyers, one to act and the other to plead, they will be at liberty to do so. At the same time poor litigants who cannot afford to engage two lawyers, will be satisfied with engaging only one lawyer and will be in a position to pursue their cases in the courts of law. The Honourable Judges of Bombay High Court, in the Memorandum submitted to the All India Bar Committee, have observed:—

“Their Lordships however feel that there may be instances even now where the costliness of system may cause injustice and may prevent a litigant from bringing his just cause to this Court. In view of this Their Lordships feel that it would be perhaps desirable to make the system optional rather than compelling every litigant to come to this Court on its Original Side through the agency of a Solicitor and Counsel.”

In view of the above reasons, I think, the dual system should be abolished or, at least, it should be made optional.

Minimum educational qualification recommended by the Committee, for enrolment as an advocate, is a degree in law. Any person desiring to enrol himself as an advocate need not obtain first a degree in arts, science or commerce. He will be entitled to join Law course immediately after he has passed pre-University Examination, and he will be entitled to be enrolled as an advocate, if he possesses a degree in law only. This will result in lowering the standard of legal education. Already, there is general deterioration in standard of education, and if students are allowed to start legal studies immediately after passing the Pre-University examination, there will be further deterioration in standard of legal education

This will also result in swelling the number of legal practitioners. Nowadays, legal profession has become the last resort of all persons who cannot qualify themselves as scientists, or technicians, who cannot secure any Government service or who cannot

follow any other profession. At present, there is keen competition amongst lawyers and as a result some of them indulge in nefarious activities. Prescribing mere degree in law as minimum educational qualification for enrolment as advocates would further aggravate the situation. Therefore, uniform minimum educational qualification for enrolment as advocate should be a law degree to be obtained after having first graduated in arts, science or commerce.

Lastly, the enrolment fee prescribed by the Committee is Rs. 250/-. This is too high and should be reduced to Rs. 125/-.

NEW DELHI;

B. D. KHOBARAGADE.

*The 22nd March, 1960.*

**Bill No. 80 B of 1959**

**THE LEGAL PRACTITIONERS BILL, 1959**

(AS REPORTED BY THE JOINT COMMITTEE)

[Words *sidelined or underlined* indicate the amendments suggested by the Committee; asterisks indicate omissions]

**A  
BILL**

*to amend and consolidate the law relating to legal practitioners and to provide for the constitution of Bar Councils and an All-India Bar.*

Be it enacted by Parliament in the Eleventh Year of the Republic of India as follows:—

**CHAPTER I**

**PRELIMINARY**

5 1. (1) This Act may be called the Advocates Act, 1960.

Short title,  
extent and  
commence-  
ment.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act.

10 2. In this Act, unless the context otherwise requires,—

(a) “advocate” means an advocate entered in any roll under the provisions of this Act; Definitions.

(b) “appointed day”, in relation to any provision of this Act, means the day on which that provision comes into force;

15 (c) “attorney” includes a solicitor;

(d) "Bar Council" means a Bar Council constituted under this Act;

(e) "Bar Council of India" means the Bar Council constituted under section 4 for the territories to which this Act extends;

(f) "common roll" means the common roll of advocates, prepared and maintained by the Bar Council of India under section 20;

(g) "High Court", except in sub-section (1) of section 34 and in sections 42 and 43, does not include a court of the Judicial Commissioner, and, in relation to a State Bar Council, means,— 10

(i) in the case of a Bar Council constituted for a State or for a State and one or more Union territories, the High Court for the State;

(ii) in the case of the Bar Council constituted for Delhi, the High Court of Punjab; 15

(h) "law graduate" means a person who has obtained a bachelor's degree in law from any University established by law in India;

(i) "legal practitioner" means an advocate, vakil or attorney of any High Court, a pleader, mukhtar or revenue agent; 20

(j) "prescribed" means prescribed by rules made under this Act;

(k) "roll" means a roll of advocates prepared and maintained under this Act;

(l) "State" does not include a Union territory; 25

(m) "State Bar Council" means a Bar Council constituted under section 3;

(n) "State roll" means a roll of advocates prepared and maintained by a State Bar Council under section 17.

## CHAPTER II

30

### BAR COUNCILS

State Bar  
Councils.

3. (1) There shall be a Bar Council—

(a) for each of the States of Andhra Pradesh, Bihar, Bombay, Madhya Pradesh, Madras, Mysore, Orissa, Rajasthan and Uttar Pradesh, to be known as the Bar Council of that State; 35

(b) for the State of Assam and the Union territory of Manipur, to be known as the Bar Council of Assam;



(c) for the State of Kerala and the Union territory of Laccadive, Minicoy and Amindivi Islands, to be known as the Bar Council of Kerala;

(d) for the State of Punjab and the Union territory of Himachal Pradesh, to be known as the Bar Council of Punjab;

(e) for the State of West Bengal and the Union territories of Tripura and the Andaman and Nicobar Islands; to be known as the Bar Council of West Bengal; and

(f) for the Union territory of Delhi, to be known as the Bar Council of Delhi.

(2) A State Bar Council shall consist of the following members, namely:—

(a) in the case of the State Bar Council of Delhi, the Additional Solicitor-General of India, *ex-officio*; and in the case of any other State Bar Council, the Advocate-General of the State, *ex-officio*;

(b) in the case of the Bar Council of Assam, the Bar Council of Orissa and the Bar Council of Delhi, fifteen members and in every other case, twenty members, elected in accordance with the system of proportional representation by means of the single transferable vote from amongst advocates on the roll of the State Bar Council.

(3) There shall be a Chairman and a Vice-Chairman of each State Bar Council elected by the Council in such manner as may be prescribed.

4. (1) There shall be a Bar Council for the territories to which this Act extends to be known as the Bar Council of India which shall consist of the following members, namely:—

(a) the Attorney-General of India, *ex-officio*;

(b) the Solicitor-General of India, *ex-officio*;

(c) one member elected by each State Bar Council from amongst its members.

(2) There shall be a Chairman and a Vice-Chairman of the Bar Council of India elected by the Council in such manner as may be prescribed.

5. Every Bar Council shall be a body corporate having perpetual succession and a common seal, with power to acquire and hold property, both movable and immovable, and to contract, and may by the name by which it is known sue and be sued.

Functions of  
State Bar  
Councils.

6. (1) The functions of a State Bar Council shall be—
- (a) to admit persons as advocates on its roll;
  - (b) to prepare and maintain such roll;
  - (c) to entertain and determine cases of misconduct against advocates on its roll; 5
  - (d) to safeguard the rights, privileges and interests of advocates on its roll;
  - (e) to promote and support law reform;
  - (f) to manage and invest the funds of the Bar Council;
  - (g) to provide for the election of its members; 10
  - (h) to perform all other functions conferred on it by or under this Act;
  - (i) to do all other things necessary for discharging the aforesaid functions.

(2) A State Bar Council may constitute a fund in the prescribed 15 manner for the purpose of giving financial assistance to indigent or disabled advocates.

Function  
Bar Council  
of India.

7. The functions of the Bar Council of India shall be—
- (a) to prepare and maintain a common roll of advocates;
  - (b) to lay down standards of professional conduct and etiquette for advocates; 20
  - (c) to lay down the procedure to be followed by its disciplinary committee and the disciplinary committee of each State Bar Councils;
  - (d) to safeguard the rights, privileges and interests of advocates; 25
  - (e) to promote and support law reform.
  - (f) to deal with and dispose of any matter arising under this Act, which may be referred to it by a State Bar Council;
  - (g) to exercise general supervision and control over State Bar Council; 30
  - (h) to promote legal education and to lay down standards of such education in consultation with the Universities in India imparting such education and the State Bar Councils;

(i) to recognise Universities whose degree in law shall be a qualification for enrolment as an advocate and for that purpose to visit and inspect Universities;

(j) to manage and invest the funds of the Bar Council;

5 (k) to provide for the election of its members;

(l) to perform all other functions conferred on it by or under this Act;

(m) to do all other things necessary for discharging the aforesaid functions.

10 8. The term of office of the elected members of a Bar Council shall be six years, but as nearly as possible one-third of the members first elected to each such Council shall retire on the expiration of every second year in the prescribed manner, and the vacancies so caused shall be filled by the election of new members in the prescribed manner.

Term of office of members of Bar Council.

15 9. (1) A State Bar Council shall constitute one or more disciplinary committees, each of which shall consist of five persons of whom three shall be persons elected by the Council from amongst its members and two shall be persons elected by the Council from amongst advocates on its roll who are not members of the Council.

Disciplinary committees.

20 (2) The Bar Council of India shall constitute a disciplinary committee consisting of five persons of whom three shall be persons elected by the Council from amongst its members and two shall be persons elected by the Council from amongst advocates on the common roll who are not members of the Council.

25 10. (1) A State Bar Council shall constitute the following standing committees, namely:—

Constitution of committees other than disciplinary committees.

(a) an executive committee consisting of five members elected by the Council from amongst its members;

30 (b) an enrolment committee consisting of three members elected by the Council from amongst its members.

(2) The Bar Council of India shall constitute the following standing committees, namely:—

35 (a) an executive committee consisting of nine members elected by the Council from amongst its members;

(b) a legal education committee consisting of ten members, of whom five shall be persons elected by the Council from amongst its members and five shall be persons co-opted by the Council who are not members thereof.

(3) A State Bar Council and the Bar Council of India may constitute from amongst its members such other committees as it may deem necessary for the purpose of carrying out the provisions of this Act.

Staff of  
Bar Council.

11. (1) Every Bar Council shall appoint a secretary and may appoint an accountant and \* \* such number of other persons on its staff as it may deem necessary.

(2) The secretary and the accountant, if any, shall possess such qualifications as may be prescribed.

Accounts  
and audit.

12. (1) Every Bar Council shall cause to be maintained such books of accounts and other books in such form and in such manner as may be prescribed.

(2) The accounts of a Bar Council shall be audited by auditors duly qualified to act as auditors of companies under the Companies Act, 1956, at such times and in such manner as may be prescribed.

1 of 1956

(3) As soon as the accounts of a State Bar Council have been audited, that Bar Council shall send a copy of such accounts together with a copy of the report of the auditors thereon, to the Bar Council of India.

Vacancies  
in Bar  
Councils and  
committees  
thereof not  
to invalidate  
action taken.

13. No act done by a Bar Council or any committee thereof shall be called in question on the ground merely of the existence of any vacancy in, or any defect in the constitution of, the Council or committee, as the case may be.

Election to  
Bar Councils  
not to be  
questioned  
on certain  
grounds.

14. No election of a member to a Bar Council shall be called in question on the ground merely that due notice thereof has not been given to any person entitled to vote thereat, if notice of the date has, not less than thirty days before that date, been published in the Official Gazette.

Power to  
make rules.

15. (1) A Bar Council may make rules to carry out the purposes of this Chapter.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the manner in which the election of members of the Bar Council shall be held and the manner in which results of elections shall be published;

(b) in the case of a State Bar Council, the constitution of a fund for giving financial assistance to indigent or disabled advocates;

\* \* \* \* \*

(c) the manner of election of the Chairman and the Vice-Chairman of the Bar Council;

(d) the manner in which and the authority by which doubts and disputes as to the validity of an election to the Bar Council or to the office of the Chairman or Vice-Chairman shall be finally decided;

(e) the manner in which the order of retirement by rotation of the members of the Bar Council shall be determined;

(f) the filling of casual vacancies in the Bar Council;

(g) the powers and duties of the Chairman and the Vice-Chairman of the Bar Council;

(h) the summoning and holding of meetings of the Bar Council, the times and places where such meetings are to be held, the conduct of business thereat, and the number of members necessary to constitute a quorum;

(i) the constitution and functions of any committee of the Bar Council and the term of office of members of any such committee;

(j) the summoning and holding of meetings, the conduct of business of any such committee, and the number of members necessary to constitute a quorum;

(k) the qualifications and the conditions of service of the secretary, the accountant and other employees of the Bar Council;

(l) the maintenance of books of accounts and other books by the Bar Council;

(m) the appointment of auditors and the audit of the accounts of the Bar Council;

(n) the management and investment of the funds of the Bar Council.

(3) No rules made under this section by a State Bar Council shall have effect unless they have been approved by the Bar Council of India.

### CHAPTER III

#### ADMISSION AND ENROLMENT OF ADVOCATES

16. (1) There shall be two classes of advocates, namely, senior advocates and other advocates.

Senior and  
other  
advocates.

(2) An advocate may, with his consent, be designated as senior advocate if the Supreme Court or a High Court is of opinion that by virtue of his ability, experience and standing at the Bar he is deserving of such distinction.

(3) Senior advocates shall, in the matter of their practice, be subject to such restrictions as the Bar Council of India may, in the interests of the legal profession, prescribe. 5

(4) An advocate of the Supreme Court who was a senior advocate of that Court immediately before the appointed day shall, for the purposes of this section, be deemed to be a senior advocate. 10

State Bar Council to maintain roll of advocates.

(17) (1) Every State Bar Council shall prepare and maintain a roll of advocates in which shall be entered the names and addresses of—

(a) all persons who were entered as advocates on the roll of any High Court under the Indian Bar Councils Act, 1926 immediately before the appointed day and who, within the prescribed time, express an intention in the prescribed manner to practise within the jurisdiction of the Bar Council; 15 38 of 1926.

(b) all other persons who are admitted to be advocates on the roll of the State Bar Council under this Act on or after the appointed day. 2

(2) Each such roll of advocates shall consist of two parts, the first part containing the names of senior advocates and the second part, the names of other advocates.

(3) Entries in each part of the roll of advocates prepared and maintained by a State Bar Council under this section shall be in the order of seniority, and such seniority shall be determined as follows :— 25

(a) the seniority of an advocate referred to in clause (a) of sub-section (1) shall be determined in accordance with his date of enrolment under the Indian Bar Councils Act, 1926; 30 38 of 1926.

(b) the seniority of any person who was a senior advocate of the Supreme Court immediately before the appointed day shall, for the purposes of the first part of the State roll, be determined in accordance with such principles as the Bar Council of India may specify; 35

(c) notwithstanding anything contained in clause (a), the seniority of a vakil, pleader or an attorney who was enrolled as an advocate immediately before the appointed day, or who is enrolled as an advocate after that day, shall be determined in accordance with the date of his entry in the register of vakils, pleaders or attorneys, as the case may be;

(d) the seniority of any other person who, on or after the appointed day, is enrolled as a senior advocate or is admitted as an advocate shall be determined by the date of such enrolment or admission, as the case may be.

(4) No person shall be enrolled as an advocate on the roll of more than one State Bar Council.

18. (1) Notwithstanding anything contained in section 17, any person whose name is entered as an advocate on the roll of any State Bar Council may make an application in the prescribed form to the Bar Council of India for the transfer of his name from the roll of that State Bar Council to the roll of any other State Bar Council and, on receipt of any such application the Bar Council of India shall direct that the name of such person shall, without the payment of any fee, be removed from the roll of the first mentioned State Bar Council and entered in the roll of the other State Bar Council and the State Bar Councils concerned shall comply with such direction.

Transfer of name from one State roll to another.

(2) For the removal of doubts it is hereby declared that where on an application made by an advocate under sub-section (1), his name is transferred from the roll of one State Bar Council to that of another, he shall retain the same seniority in the latter roll to which he was entitled in the former roll.

19. Every State Bar Council shall send to the Bar Council of India an authenticated copy of the roll of advocates prepared by it for the first time under this Act and shall thereafter communicate to the Bar Council of India all alterations in, and additions to, any such roll, as soon as the same have been made.

State Bar Council to send copies of rolls of advocates to Bar Council of India.

20. (1) The Bar Council of India shall prepare and maintain a common roll of advocates which shall comprise the entries made in all State rolls and shall include the names of all advocates entitled as if right to practise in the Supreme Court immediately before the appointed day whose names are not entered in any State roll.

Common roll of advocates.

(2) The common roll of advocates shall consist of two parts, the first part containing the names of senior advocates, and the second part, the names of other advocates.

(3) Entries in each part of the common roll shall be in the order of seniority and such seniority shall be determined as follows:—

(a) the seniority of an advocate enrolled in a State roll shall be determined in accordance with his seniority in that roll;

5

(b) the seniority of any person who was a senior advocate of the Supreme Court immediately before the appointed day and whose name is not entered in any State roll shall, for the purposes of the first part of the common roll, be determined in accordance with such principles as the Bar Council of India may specify in this behalf;

(c) the seniority of any person who was an advocate (but not a senior advocate) of the Supreme Court immediately before the appointed day and whose name is not entered in any State roll shall, for the purposes of the second part of the common roll, be determined in accordance with the date of his enrolment as an advocate of the Supreme Court.

(4) There shall be entered in the common roll of advocates all alterations and additions communicated to the Bar Council of India under section 19 by a State Bar Council.

20

Disputes  
regarding  
seniority.

21. (1) Where the date of seniority of two or more persons is the same, the one senior in age shall be reckoned as senior to the other.

(2) Subject as aforesaid, if any dispute arises with respect to the seniority of any person, it shall be referred—

25

(a) if the dispute relates to seniority in a State roll, to the State Bar Council;

(b) if the dispute relates to seniority in the common roll, to the Bar Council of India;

and the decision of the State Bar Council or the Bar Council of India, as the case may be, in respect of such dispute shall be final.

30

Certificate  
of enrolment.

22. There shall be issued a certificate of enrolment in the prescribed form to every person whose name is entered in any roll of advocates maintained under this Act.

Right of  
pre-audience.

23. (1) The Attorney-General of India shall have pre-audience over all other advocates.

35



(2) Subject to the provisions of sub-section (1), the Solicitor-General of India shall have pre-audience over all other advocates.

(3) Subject to the provisions of sub-sections (1) and (2), the Additional Solicitor-General of India shall have pre-audience over all other advocates.

(4) Subject to the provisions of sub-sections (1), (2) and (3), the Advocate-General of any State shall have pre-audience over all other advocates, and the right of pre-audience among Advocates-General *inter se* shall be determined by their respective seniority.

(5) Subject as aforesaid—

(i) senior advocates shall have pre-audience over other advocates, and

(ii) the right of pre-audience of senior advocates *inter se* and other advocates *inter se* shall be determined by their respective seniority.

24. (1) Subject to the provisions of this Act and the rules made thereunder, a person shall be qualified to be admitted as an advocate on a State roll, if he fulfils the following conditions, namely:—

Persons who may be admitted as advocates on a State roll.

(a) he is a citizen of India;

Provided that subject to the other provisions contained in this Act, a national of any other country may be admitted as an advocate on a State roll, if citizens of India, duly qualified, are permitted to practise law in that other country;

(b) he has completed the age of twenty-one years;

(c) he has obtained a degree in law from any University in India or elsewhere which is recognised for the purposes of this Act by the Bar Council of India or is a barrister;

(d) he has undergone a course of training in law and passed an examination after such training both of which shall be prescribed by the State Bar Council;

Provided that this clause shall not apply to—

(i) a barrister who has received practical training in England;

(ii) any person who has been a member of the Judicial Service of a State or a member of the Central Legal Service; and

(iii) any other class of persons who by reason of their legal training or experience are declared by the Bar Council of India to be exempt from the provisions of this clause;

(e) he fulfils such other conditions as may be specified in the rules made by the State Bar Council under this Chapter;

(f) he has paid an enrolment fee of two hundred and fifty rupees to the State Bar Council.

(2) Notwithstanding anything contained in sub-section (1), a vakil, pleader or an attorney who is a law graduate, or who is not a law graduate but was entitled to be enrolled as an advocate of a High Court immediately before the appointed day under any law then in force, may be admitted as an advocate on a State roll if he—

(a) makes an application for such enrolment in accordance with the provisions of this Act, not later than two years from the appointed day; and

(b) fulfils the conditions specified in clauses (a), (b), (e) and (f) of sub-section (1).

Authority to whom applications for enrolment may be made.

25. An application for admission as an advocate shall be made in the prescribed form to the State Bar Council within whose jurisdiction the applicant proposes to practise.

Disposal of applications for admission as an advocate.

26. (1) A State Bar Council shall refer every application for admission as an advocate to its enrolment committee, and subject to the provisions of sub-sections (2) and (3), such committee shall dispose of the application in the prescribed manner.

(2) Where the enrolment committee of a State Bar Council proposes to refuse any such application, it shall refer the application for opinion to the Bar Council of India and every such reference shall be accompanied by a statement of the grounds in support of the refusal of the application.

(3) The enrolment committee of a State Bar Council shall dispose of any application referred to the Bar Council of India under sub-section (2) in conformity with the opinion of the Bar Council of India.

Application once refused not to be entertained by another Bar Council except in certain circumstances.

27. Where a State Bar Council has refused the application of any person for admission as an advocate on its roll, no other State Bar Council shall entertain an application for admission of such person as an advocate on its roll, except with the previous consent in writing of the State Bar Council which refused the application and of the Bar Council of India.

Power to make rules.

28. (1) A State Bar Council may make rules to carry out the purposes of this Chapter.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the time within which and the manner in which an intention to practise within the jurisdiction of the Bar Council shall be expressed;

(b) a course of practical training in law and the examination to be passed after such training for admission as an advocate on the roll of the Bar Council;

(c) the form in which an application shall be made to the Bar Council for admission as an advocate on its roll and the manner in which such application shall be disposed of by the enrolment committee of the Bar Council;

(d) the conditions subject to which a person may be admitted as an advocate on any such roll;

(e) the instalments in which the enrolment fee may be paid.

(3) No rules made under this Chapter shall have effect unless they have been approved by the Bar Council of India.

#### CHAPTER IV

##### RIGHT TO PRACTISE

29. Subject to the provisions of this Act and any rules made thereunder, there shall, as from the appointed day, be only one class of legal practitioners, namely, advocates enrolled under this Act.

Advocates to be the only recognised class of legal practitioners.

30. (1) Every advocate whose name is entered in the common roll shall be entitled as of right to practise throughout the territories to which this Act extends,—

Right of advocates to practise.

(i) in all courts including the Supreme Court;

(ii) before any tribunal or person legally authorised to take evidence; and

(iii) before any other authority or person before whom such advocate is by or under any law for the time being in force entitled to practise.

(2) The right to practise conferred by sub-section (1) shall be subject to the restrictions imposed by articles 124 and 220 of the Constitution, the provisions of this Act and the rules made thereunder and the provisions of any other law for the time being in force.

Special provision for attorneys.

31. Notwithstanding anything contained in sections 29 and 30, the High Court at Calcutta or the High Court at Bombay may provide for the admission of proper persons to be attorneys and shall have power to remove or to suspend from practice on reasonable cause, any such attorney.

5

Power of court to permit appearances in particular cases.

32. Notwithstanding anything contained in this Chapter, any court, authority or person may permit any person, not enrolled as an advocate under this Act, to appear before it or him in any particular case.

Advocates alone entitled to practise

33. Except as otherwise provided in this Act or in any other law for the time being in force, no person shall, on or after the appointed day, be entitled to practise in any court or before any authority or person unless he is enrolled as an advocate under this Act.

Power of High Courts to make rules

34. (1) The High Court may make rules laying down the conditions subject to which an advocate shall be permitted to practise in the High Court and the courts subordinate thereto.

(2) Without prejudice to the provisions contained in sub-section (1), the High Court at Calcutta and the High Court at Bombay may make rules—

(i) providing for the qualification and admission of proper persons to be attorneys;

(ii) declaring what shall be deemed to be the functions, powers and duties of such attorneys and the procedure to be followed in removing or suspending any such attorney from practice;

(iii) determining the persons who shall be entitled respectively to plead and to act in the High Court in the exercise of its original jurisdiction.

25

(3) Until rules are made under this section, any rules made by a High Court under its Letters Patent or any other law relating to any of the matters specified in this section which were in force immediately before the appointed day, shall continue in force so far as consistent with this Act, and shall be deemed to be rules made under this section.

## CHAPTER V

35

### CONDUCT OF ADVOCATES

Punishment of advocates for misconduct.

35. (1) Where on receipt of a complaint or otherwise a State Bar Council has reason to believe that any advocate on its roll has been guilty of professional or other misconduct, it shall refer the case for disposal to its disciplinary committee.

40

(2) The disciplinary committee of a State Bar Council, if it does not summarily reject the complaint, shall fix a date for the hearing of the case and shall cause a notice thereof to be given to the advocate concerned and to the Advocate-General of the State.

5 (3) The disciplinary committee of a State Bar Council after giving the advocate concerned and the Advocate-General an opportunity of being heard, may make any of the following orders, namely:—

10 (a) dismiss the complaint or, where the proceedings were initiated at the instance of the State Bar Council, direct that the proceedings be filed;

(b) reprimand the advocate;

(c) suspend the advocate from practice for such period as it may deem fit;

15 (d) remove the name of the advocate from the State roll of advocates.

(4) Where an advocate is suspended from practice under clause (c) of sub-section (3), he shall during the period of suspension, be debarred from practising in any court or before any authority or  
20 person in India.

(5) Where any notice is issued to the Advocate-General under sub-section (2), the Advocate-General may appear before the disciplinary committee of the State Bar Council either in person or through any advocate appearing on his behalf.

25 36. (1) Where on receipt of a complaint or otherwise the Bar Council of India has reason to believe that any advocate on the common roll whose name is not entered on any State roll has been guilty of professional or other misconduct, it shall refer the case for disposal to its disciplinary committee.

Disciplinary powers of Bar Council of India.

30 (2) Notwithstanding anything contained in this Chapter, the disciplinary committee of the Bar Council of India may, of its own motion, withdraw for inquiry before itself any proceedings for disciplinary action against any advocate pending before the disciplinary committee of any State Bar Council and dispose of the same.

35 (3) The disciplinary committee of the Bar Council of India, in disposing of any case under this section, shall observe, so far as may be, the procedure laid down in section 35, the references to the Advocate-General in that section being construed as references to the Attorney-General of India.

(4) In disposing of any proceedings under this section the disciplinary committee of the Bar Council of India may make any order which the disciplinary committee of a State Bar Council can make under sub-section (3) of section 35, and where any proceedings have been withdrawn for inquiry before the Bar Council of India, the State Bar Council concerned shall give effect to any such order.

Appeal to  
the Bar  
Council of  
India.

37. (1) Any person aggrieved by an order of the disciplinary committee of a State Bar Council made under sub-section (3) of section 35 may, within sixty days of the date of the communication of the order to him, prefer an appeal to the Bar Council of India. 10

(2) Every such appeal shall be heard by the disciplinary committee of the Bar Council of India which may pass such order thereon as it deems fit.

Appeal to  
the Supreme  
Court.

38. Any person aggrieved by an order made by the disciplinary committee of the Bar Council of India under section 36 or section 37 may, within sixty days of the date on which the order is communicated to him, prefer an appeal to the Supreme Court and the Supreme Court may pass such order thereon as it deems fit. 15

Application  
of sections 5  
and 12 of the  
Indian Limita-  
tion Act.

39. The provisions of sections 5 and 12 of the Indian Limitation Act, 1908 shall, so far as may be, apply to appeals under section 37 and section 38. 20 9 of 1908.

Stay of  
order.

40. An appeal, made under section 37 or section 38, shall not operate as a stay of the order appealed against, but the disciplinary committee of the Bar Council of India, or the Supreme Court, as the case may be, may, for sufficient cause, direct the stay of such order on such terms and conditions as it may deem fit. 25

Alteration in  
roll of ad-  
vocates.

41. (1) Where an order is made under this Chapter reprimanding or suspending an advocate, a record of the punishment shall be entered against his name—

(a) in the case of an advocate whose name is entered in a State roll, in that roll; 30

(b) in the case of an advocate whose name is entered in the common roll and not in any State roll, in the common roll;

and where any order is made removing an advocate from practice, his name shall be struck off the State roll or the common roll, as the case may be. 35

(2) Where in respect of any advocate a record of punishment is entered in a State roll or where the name of an advocate is struck off any such roll, a record of such punishment shall also be entered in

the common roll, or, as the case may be, his name shall be struck off the common roll.

(3) Where any advocate is suspended or removed from practice, the certificate granted to him under section 22, in respect of his enrolment shall be recalled.

42. (1) The disciplinary committee of a Bar Council shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, in respect of the following matters, namely:—

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring discovery and production of any documents;
- (c) receiving evidence on affidavits;
- (d) requisitioning any public record or copies thereof from any court or office;
- (e) issuing commissions for the examination of witnesses or documents;
- (f) any other matter which may be prescribed:

Provided that no such disciplinary committee shall have the right to require the attendance of—

- (a) any presiding officer of a court except with the previous sanction of the High Court to which such court is subordinate;
- (b) any officer of a revenue court except with the previous sanction of the State Government.

(2) All proceedings before a disciplinary committee of a Bar Council shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code, and every such disciplinary committee shall be deemed to be a civil court for the purposes of sections 480, 482 and 485 of the Code of Criminal Procedure, 1898.

(3) For the purposes of exercising any of the powers conferred by sub-section (1), a disciplinary committee may send to any civil court in the territories to which this Act extends, any summons or other process, for the attendance of a witness or the production of a document required by the committee or any commission which it desires to issue, and the civil court shall cause such process to be served or such commission to be issued, as the case may be and may enforce any such process as if it were a process for attendance or production before itself.

Cost of proceedings before a disciplinary committee.

43. The disciplinary committee of a Bar Council may make such order as to the costs of any proceedings before it as it may deem fit and any such order shall be executable as if it were an order—

(a) in the case of an order of the disciplinary committee of the Bar Council of India, of the Supreme Court;

(b) in the case of an order of the disciplinary committee of a State Bar Council, of the High Court.

Review of orders by disciplinary committee.

44. The disciplinary committee of a Bar Council may of its own motion or otherwise review any order passed by it under this Chapter:

Provided that no such order of review of the disciplinary committee of a State Bar Council shall have effect unless it has been approved by the Bar Council of India.

## CHAPTER VI

### MISCELLANEOUS

Penalty for persons illegally practising in courts and before other authorities.

45. Any person who practises in any court or before any authority or person, in or before whom he is not entitled to practise under the provisions of this Act, shall be punishable with imprisonment for a term which may extend to six months.

Payment of part of enrolment fees to the Bar Council of India.

46. Every State Bar Council shall, before the thirtieth day of April in each financial year, pay to the Bar Council of India a sum equivalent to forty per cent. of the total of the enrolment fees realised by it under this Act during the financial year immediately preceding that year.

Reciprocity.

47. (1) Where any country, specified by the Central Government in this behalf by notification in the Official Gazette, prevents citizens of India from practising the profession of law or subjects them to unfair discrimination in that country, no subject of any such country shall be entitled to practise the profession of law in India.

(2) Subject to the provisions of sub-section (1), the Bar Council of India may prescribe the conditions, if any, subject to which foreign qualifications in law obtained by persons other than citizens of India shall be recognised for the purpose of admission as an advocate under this Act.

Indemnity against legal proceedings.

48. No suit or other legal proceeding shall lie against any Bar Council or any committee thereof or a member of a Bar Council for any act in good faith done or intended to be done in pursuance of the provisions of this Act or of any rules made thereunder.



49. The Bar Council of India may make rules for discharging its functions under this Act, and, in particular, such rules may prescribe—

General power of the Bar Council of India to make rules.

(a) the manner in which the name of an advocate may be prevented from being entered in more than one State roll;

(b) the form in which an application shall be made for the transfer of the name of an advocate from one State roll to another;

(c) the standards of professional conduct and etiquette to be observed by advocates;

(d) the standards of legal education to be observed by Universities in India and the inspection of Universities for that purpose;

(e) the foreign qualifications in law obtained by persons other than citizens of India which shall be recognised for the purpose of admission as an advocate under this Act;

(f) the procedure to be followed by the disciplinary committee of a State Bar Council and by its own disciplinary committee;

(g) the restrictions in the matter of practice to which senior advocates shall be subject;

(h) the fees which may be levied in respect of any matter under this Act;

(i) general principles for guidance of State Bar Councils:

Provided that no rules made with reference to clause (e) shall have effect unless they have been approved by the Central Government.

50. (1) On the date on which a State Bar Council is constituted under this Act, the provisions of sections 3 to 7 (inclusive), sub-sections (1), (2) and (3) of section 9, section 15 and section 20 of the Indian Bar Councils Act, 1926, shall stand repealed in the territory for which the State Bar Council is constituted.

Repeal of certain enactments.

(2) On the date on which Chapter III comes into force, the following shall stand repealed, namely:—

(a) sections 6, 7, 18 and 37 of the Legal Practitioners Act, 1879, and so much of sections 8, 9, 16, 17, 19 and 41 of that Act as relate to the admission and enrolment of legal practitioners;

- (b) sections 3, 4 and 6 of the Bombay Pleaders Act, 1920; Bombay Act  
17 of 1920.
- (c) so much of section 8 of the Indian Bar Councils Act, 1926, as relates to the admission and enrolment of legal practitioners; 38 of 1926.
- (d) the provisions of the Letters Patent of any High Court and of any other law in so far as they relate to the admission and enrolment of legal practitioners. 5

(3) On the date on which Chapter IV comes into force, the following shall stand repealed, namely:—

- (a) sections 4, 5, 10 and 20 of the Legal Practitioners Act, 1879, and so much of sections 8, 9, 19 and 41 of that Act as confer on legal practitioners the right to practise in any court or before any authority or person; 10  
18 of 1879.
- (b) sections 5, 7, 8 and 9 of the Bombay Pleaders Act, 1920; Bombay Act  
17 of 1920.
- (c) section 14 of the Indian Bar Councils Act, 1926, and so much of sections 8 and 15 of that Act as confer on legal practitioners the right to practise in any court or before any authority or person; 15  
38 of 1926.
- (d) the Supreme Court Advocates (Practice in High Courts) Act, 1951; 20 18 of 1951.
- (e) the provisions of the Letters Patent of any High Court and of any other law conferring on legal practitioners the right to practise in any court or before any authority or person.

(4) On the date on which Chapter V comes into force, the following shall stand repealed, namely:— 25

- (a) sections 12 to 15 (inclusive), sections 21 to 24 (inclusive) and sections 39 and 40 of the Legal Practitioners Act, 1879, and so much of sections 16, 17 and 41 of that Act as relate to the suspension, removal or dismissal of legal practitioners; 18 of 1879.
- (b) sections 24 to 27 (inclusive) of the Bombay Pleaders Act, 1920; 30  
Bombay Act  
17 of 1920.
- (c) sections 10 to 13 (inclusive) of the Indian Bar Councils Act, 1926; 38 of 1926.
- (d) the provisions of the Letters Patent of any High Court and of any other law in so far as they relate to the suspension, removal or dismissal of legal practitioners. 35

(5) When the whole of this Act has come into force—

- (a) the remaining provisions of the Acts referred to in this section which do not stand repealed by virtue of any of the

18 of 1879.

foregoing provisions of this section (except sections 1, 3 and 36 of the Legal Practitioners Act, 1879) shall stand repealed;

(b) the enactments specified in the Schedule shall stand repealed to the extent mentioned therein.

5 51. On and from the appointed day, references in any enactment to an advocate enrolled by a High Court in any form of words shall be construed as references to an advocate enrolled under this Act. Rule of construction.

52. Nothing in this Act shall be deemed to affect the power of the Supreme Court to make rules under article 145 of the Constitution— Saving.

(a) for laying down the conditions subject to which a senior advocate shall be entitled to practise in that Court;

(b) for determining the persons who shall be entitled to act in that Court.

15

## CHAPTER VII

### TEMPORARY AND TRANSITIONAL PROVISIONS

53. Notwithstanding anything contained in this Act, the elected members of a State Bar Council, constituted for the first time under this Act, shall be elected by and from amongst advocates, vakils, 20 pleaders and attorneys who, on the date of the election, are entitled as of right to practise in the High Court and are ordinarily practising within the territory for which the Bar Council is to be constituted. Elections to first State Bar Council.

*Explanation.*—Where the territory for which the Bar Council is to be constituted includes a Union territory, the expression “High 25 Court” shall include the Court of the Judicial Commissioner of that Union territory.

54. Notwithstanding anything contained in this Act, the term of office of the nominated and elected members of the Bar Council of India and a State Bar Council constituted for the first time, shall 30 be two years from the date of the first meeting of the Council. Term of office of members of first Bar Council of India and State Bar Councils.

55. Notwithstanding anything contained in this Act,—

(a) every pleader or vakil practising as such immediately before the date on which Chapter IV comes into force (hereinafter in this section referred to as the said date) by virtue of the provisions of the Legal Practitioners Act, 1879, the Bombay Pleaders Act, 1920, or any other law who does not elect to be, or is not qualified to be, enrolled as an advocate under this Act; Rights of certain existing legal practitioners not affected.

18 of 1879 35  
Bombay Act  
17 of 1920.

(b) every attorney practising as such immediately before the said date by virtue of the provisions of the Legal Practitioners Act, 1879, or any other law who does not elect to be, or is not qualified to be, enrolled as an advocate under this Act; 18 of 1879.

(c) every mukhtar and revenue agent practising as such immediately before the said date by virtue of the provisions of the Legal Practitioners Act, 1879, or any other law; 18 of 1879.

shall, notwithstanding the repeal by this Act of the relevant provisions of the Legal Practitioners Act, 1879, the Bombay Pleaders Act, 1920, or other law, continue to enjoy the same rights as respects practice in any court or revenue office or before any authority or person and be subject to the disciplinary jurisdiction of the same authority which he enjoyed or, as the case may be, to which he was subject immediately before the said date and accordingly the relevant provisions of the Acts or law aforesaid shall have effect in relation to such persons as if they had not been repealed. 18 of 1879. Bombay Act 17 of 1920.

Dissolution  
of existing  
Bar  
Councils.

56. (1) On the constitution under this Act of a State Bar Council, other than the Bar Council of Delhi (hereinafter referred to as the new Bar Council)—

(a) all properties and assets vesting in the corresponding Bar Council shall vest in the new Bar Council; 20

(b) all rights, liabilities, and obligations of the corresponding Bar Council, whether arising out of any contract or otherwise, shall be the rights, liabilities and obligations respectively of the new Bar Council; 25

(c) all proceedings pending before the corresponding Bar Council in respect of any disciplinary matter or otherwise shall stand transferred to the new Bar Council.

(2) In this section, "corresponding Bar Council" in relation to a State Bar Council, other than the Bar Council of Delhi means the Bar Council for the High Court in the territory for which the State Bar Council is constituted under this Act. 30

Power to  
make rules  
pending the  
constitution  
of a Bar  
Council.

57. Until a Bar Council is constituted under this Act, the power of that Bar Council to make rules under this Act shall be exercised—

(a) in the case of the Bar Council of India, by the Supreme Court; 35

(b) in the case of a State Bar Council, by the High Court.

## THE SCHEDULE

[See section 50 (5)]

## REPEAL OF CERTAIN ENACTMENTS

Short title	Extent of repeal	
1. The Legal Practitioners (Women) Act, 1923 (23 of 1923).	The whole.	5
2. The Legal Practitioners (Fees) Act, 1926 (21 of 1926).	The whole.	
3. The States Reorganisation Act, 1956 (37 of 1956).	Section 53.	10

M. N. KAUL,  
*Secretary.*

